

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Eastern District of Texas on the following

☐ Trademarks or ☒ Patents. (☒ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 5:11-cv-85	DATE FILED 4/14/2011	U.S. DISTRICT COURT Eastern District of Texas
PLAINTIFF GHJ Holdings, LLC		DEFENDANT GARMIN INTERNATIONAL, INC., GARMIN CORPORATION, GARMIN USA, INC. AND GARMIN
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,991,330	1/31/2006	Mitsubishi Paper Mills Ltd. (Tokyo, Japan)
2 6,850,844	2/1/2005	Garmin Ltd. (KY)
3 6,687,615	2/3/2004	Garmin Ltd. (KY)
4 6,463,385	10/8/2002	William R. Fry (Colorado Springs, CO)
5 6,466,514	10/15/2002	Garmin Corporation (TW)

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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DECISION/JUDGEMENT		
CLERK	(BY) DEPUTY CLERK	DATE

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Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

PARTIES

2. Relator is a Texas limited liability company with its principal place of business in Texarkana, Texas.

3. Upon information and belief, Defendant Garmin International, Inc. is a corporation organized under the laws of the state of Kansas and may be served through its registered agent, Andrew R. Etkind, 1200 East 151st Street, Olathe, Kansas 66062.

4. Upon information and belief, Defendant Garmin Corporation is a Taiwanese company with its principal place of business at No 68, Jangshu 2nd Road, Sijihih, Taipei County, Taiwan.

5. Upon information and belief, Defendant Garmin USA, Inc. is a corporation organized under the laws of the state of Kansas and may be served through its registered agent, Andrew R. Etkind, 1200 East 151st Street, Olathe, Kansas 66062.

6. Upon information and belief, Defendant Garmin Ltd. is a Swiss company with its principal place of business at Vorstandt 40/42 8200 Schaffhausen, Switzerland.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over Relator's false marking claims under Title 28 U.S.C. §§1331 and 1338(a).

8. This Court has personal jurisdiction over Defendants by virtue of, *inter alia*, Defendants' persistent and continuous contacts with the Eastern District of Texas, including active and regular conduct of business during the relevant time period through its sales in the Eastern District of Texas.

9. This Court has personal jurisdiction over Defendants because, *inter alia*, Defendants have violated Title 35 U.S.C. §292, and falsely marked, advertised, distributed, and sold products in the Eastern District of Texas. Further, on information and belief, Defendants have sold falsely marked products in competition with sellers of competitive products in the Eastern District of Texas. Such sales by Defendants are substantial, continuous, and systematic.

10. Venue is proper in this District under Title 28 U.S.C. §§1391(b) and (c) and 1395(a).

FACTS

11. According to Garmin Ltd.'s Annual Report FY2010 Form 10-K, Garmin Ltd. and subsidiaries (together, "Garmin") manufacture, market, and distribute

Global Positioning System-enabled products and other related products. Garmin Corporation, wholly-owned by Garmin Ltd., is primarily responsible for the manufacturing and distribution of Garmin's products to Garmin International, Inc. Garmin International, Inc. is primarily responsible for sales and marketing of Garmin's products in many international markets and in the United States as well as research and new product development. According to a complaint filed less than a month ago on March 21, 2011 for patent infringement related to Garmin's outdoor/fitness line of personal navigation devices, Garmin International, Inc. and Garmin USA, Inc. sell Garmin's products in the United States. *See Garmin International, Inc. v. Bryton, Inc.*, District of Kansas, Case No. 2:11-cv-02162.

12. Garmin has marked and/or continues to mark its products, including, but not limited to, its Forerunner® 305 and 205 watches (collectively, the "Falsely Marked Products") with expired and/or otherwise inapplicable patents, including at least U.S. Patent Nos. 5,111,150; D365,032; D365,292; D409,927; D427,919 and D429,173 (the "Expired and Inapplicable Patents"). The Falsely Marked Products are a part of Garmin's outdoor/fitness market segment.

13. Such false marking by Garmin includes marking the Expired and Inapplicable Patents upon, affixing the Expired and Inapplicable Patents to, and/or

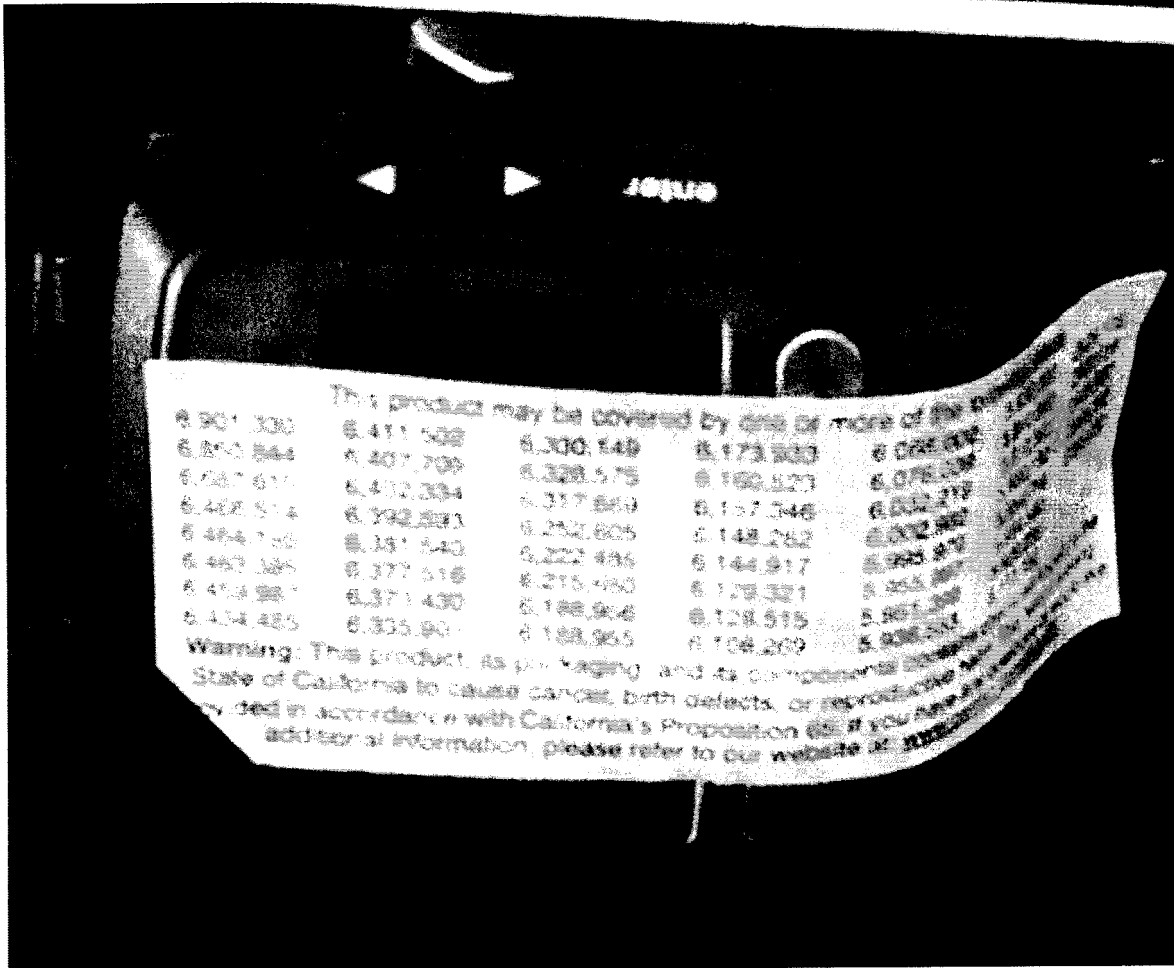
using the Expired and Inapplicable Patents in advertising in connection with the Falsely Marked Products.

14. U.S. Patent No. 5,111,150 was filed on September 26, 1990 and issued May 5, 1992. It expired no later than September 26, 2010. Nevertheless, Garmin has marked one or more of the Falsely Marked Products with it after expiration.

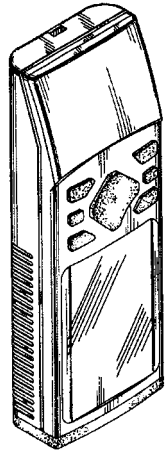
15. U.S. Patent No. D365,032 was filed September 23, 1994 and issued December 12, 1995. It expired no later than December 12, 2009. Nevertheless, Garmin has marked one or more of the Falsely Marked Products with it after expiration.

16. U.S. Patent No. D365,292 was filed September 23, 1994 and issued December 19, 1995. It expired no later than December 19, 2009. Nevertheless, Garmin has marked one or more of the Falsely Marked Products with it after expiration.

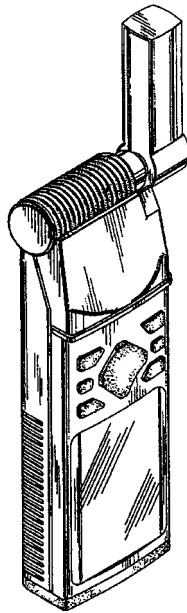
17. Garmin has also falsely marked and/or continues to falsely mark the Falsely Marked Products with intent to deceive by marking them with a “laundry list” of Garmin’s patents that are inapplicable to the Falsely Marked Products, including, but not limited to U.S. Patent Nos. D365,032; D365,292; D409,927; D427,919 and D429,173, as can be seen here:



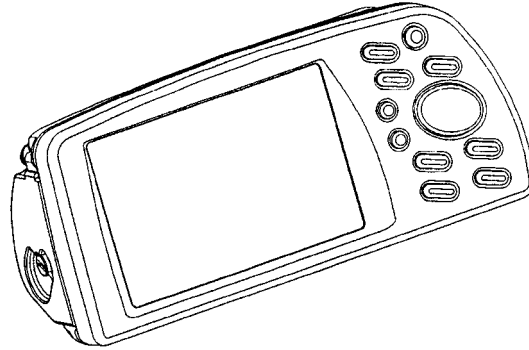
18. U.S. Patent Nos. D365,032; D365,292; D409,927; D427,919 and D429,173 cover the following designs respectively:



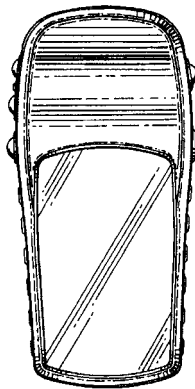
D365,032



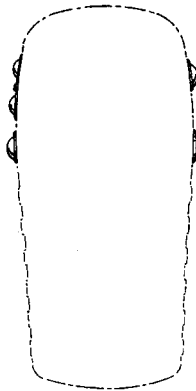
D365,292



D409,927



D427,919



D429,173

19. As can be seen below, the Forerunner® 305 and 205 watches are clearly not covered by U.S. Patent Nos. D365,032; D365,292; D409,927; D427,919 and

D429,173. Nevertheless, Garmin continues to mark the Falsely Marked Products with them with the intent to deceive.



Forerunner® 305



Forerunner® 205

20. Garmin has marked the Falsely Marked Products by printing the Expired and Inapplicable Patents on stickers placed on the Falsely Marked Products. Such markings could have easily been updated to reflect accurate patent information. Garmin could have easily remarked its products to not include expired and inapplicable patent numbers, but decided not to. Further, the fact that Garmin affirmatively affixed stickers to the Falsely Marked Products (rather than marking them by plastic molding) is further indication that Garmin was aware of the falsity of the markings.

21. It was a false statement for Garmin to mark the Falsely Marked Products with expired or otherwise inapplicable patents. Garmin knew that the patents were expired or otherwise inapplicable, but nevertheless marked them on its products after they expired or when they were clearly inapplicable in an attempt to deceive the public.

22. Garmin is a large, sophisticated company that regularly enforces its patents and that regularly reviews its patent portfolio (in light of the importance of such intellectual property in the navigation and global positioning industry). Garmin has, and/or regularly retains, sophisticated legal counsel. Defendant has many years of experience applying for patents, obtaining patents, licensing patents,

and/or litigating in patent infringement lawsuits. Indeed, the United States Patent and Trademark Office's website shows Garmin Ltd. and its subsidiaries to be the assignees to 246 patents and patent applications. Further, Garmin Ltd. and its subsidiaries have been a party to 39 patent-related cases, many in which Garmin Ltd. and its subsidiaries have asserted claims for patent infringement. Even more compelling is that Garmin just less than a month ago filed a complaint for patent infringement related to Garmin's outdoor/fitness line of personal navigation devices, the same market segment as the Falsely Marked Products, in *Garmin International, Inc. v. Bryton, Inc.*, District of Kansas, Case No. 2:11-cv-02162. The patents that Garmin owns or has licensed, including the Expired and Inapplicable Patents, were or are important assets to Garmin and are consistently reviewed and monitored in the course of Garmin's business. A statement from Garmin's 2009 Annual Report makes it clear that Garmin continuously reviews its patent portfolio and knows when a patent expires and which patents cover which products:

Our success and ability to compete is dependent in part on our proprietary technology. We rely on a combination of patent, copyright, trademark and trade secret laws, as well as confidentiality agreements, to establish and protect our proprietary rights. In addition, Garmin often relies on licenses of intellectual property for use in its

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1 6,464,185	10/15/2002	Garmin Corporation (TW)
2 6,459,987	10/1/2002	Garmin Corporation (TW)
3 6,434,485	8/13/2002	Garmin Corporation (TW)
4 6,411,152	6/25/2002	Broadcom Corporation (Irvine, CA)
5 6,407,709	6/18/2002	Garmin Corporation (TW)

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

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business. For example, Garmin obtains licenses for digital cartography technology for use in our products from various sources.

As of January 21, 2010, Garmin's worldwide IP portfolio includes over 400 patents and 250 trademark registrations. Garmin was selected as a constituent of the 2009 Ocean Tomo® 300 Patent Index and the 2009 Wall Street Journal® Electronic & Instruments Patent Scorecard, both of which are indices that recognize companies with high intellectual property value. We believe that our continued success depends on the intellectual skills of our employees and their ability to continue to innovate. Garmin will continue to file and prosecute patent applications when appropriate to attempt to protect Garmin's rights in its proprietary technologies.

There is no assurance that our current patents, or patents which we may later acquire, may successfully withstand any challenge, in whole or in part. It is also possible that any patent issued to us may not provide us with any competitive advantages, or that the patents of others will preclude us from manufacturing and marketing certain products. Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our products or to obtain and use information that we regard as proprietary. Litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement or invalidity.

Garmin's 2009 Annual Report. The patents that Garmin owns or has licensed, including the Expired and Inapplicable Patents, were or are important assets to Garmin and are consistently reviewed and monitored in the course of Garmin's business.

23. The expiration date of a U.S. Patent is not readily ascertainable by members of the public at the time of the product purchase. The patent number itself does not provide members of the public with the expiration date of the patent. Basic information about a patent, such as the filing, issue and priority dates associated with a particular U.S. patent number are available at, for example, the website of the United States Patent and Trademark Office ("USPTO"). However, access to the Internet is necessary to retrieve that information (meaning that a consumer may not have the ability to retrieve the information, especially while he is in a store making a purchasing decision) and even after retrieving that information, it does not always include the expiration date of a patent. Rather, a member of the public must also conduct a burdensome legal analysis, requiring specific knowledge of U.S. Patent laws regarding patent term expiration. Notably, a correct calculation of the expiration date must also account for at least: a) any term extensions granted

by the USPTO, which may or may not be present on the face of the patent, and b) whether or not the patent owner has paid the necessary maintenance fees.

24. Garmin knew that a patent that is expired does not cover any product and certain patents do not cover certain products.

25. Garmin knew that it was a false statement to mark the Falsely Marked Products with an expired or otherwise inapplicable patent.

26. Garmin did not have, and could not have had, a reasonable belief that its products were properly marked, and Garmin knew that the aforementioned patents had expired and/or were inapplicable.

INJURY IN FACT TO THE UNITED STATES

27. Garmin's practice of false marking is injurious to the United States.

28. The false marking alleged above caused injuries to the sovereignty of the United States arising from Garmin's violations of federal law, specifically, the violation of 35 U.S.C. §292(a). The United States has conferred standing on "any person," which includes Relator, as the United States' assignee of the claims in this complaint to enforce section 292.

29. The false marking alleged above caused proprietary injuries to the United States, which, together with section 292, would provide another basis to confer standing on Relator as the United States' assignee.

30. The marking and false marking statutes exist to give the public notice of patent rights. Congress intended the public to rely on marking as a ready means of discerning the status of intellectual property embodied in an article of manufacture or design, such as the Falsely Marked Products.

31. Federal patent policy recognizes an important public interest in permitting full and free competition in the use of ideas that are, in reality, a part of the public domain—such as those described in the Expired and Inapplicable Patents.

32. Congress' interest in preventing false marking was so great that it enacted a statute that sought to encourage private parties to enforce the statute. By permitting members of the public to bring *qui tam* suits on behalf of the government, Congress authorized private persons like Relator to help control false marking.

33. The acts of false marking alleged above deter innovation and stifle competition in the marketplace for at least the following reasons: if an article that is within the public domain is falsely marked, potential competitors may be

dissuaded from entering the same market; false marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement; and false marking can cause unnecessary investment in design around or costs incurred to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete.

34. The false marking alleged above misleads the public into believing that the Expired and Inapplicable Patents give Garmin control of the Falsely Marked Products (as well as like products), placing the risk of determining whether the Falsely Marked Products are controlled by such patents on the public, thereby increasing the cost to the public of ascertaining who, if anyone, in fact controls the intellectual property embodied in the Falsely Marked Products.

35. Thus, in each instance where a representation is made that the Falsely Marked Products are protected by the Expired and Inapplicable Patents, a member of the public desiring to participate in the market for products like the Falsely Marked Products must incur the cost of determining whether the involved patents are valid and enforceable. Failure to take on the costs of a reasonably competent search for information necessary to interpret each patent, investigation into prior

art and other information bearing on the quality of the patents, and analysis thereof can result in a finding of willful infringement, which may treble the damages an infringer would otherwise have to pay.

36. The false marking alleged in this case also creates a misleading impression that the Falsely Marked Products are technologically superior to previously available products, as articles bearing the term “patent” may be presumed to be novel, useful, and innovative.

37. Every person or company in the United States is a potential entrepreneur with respect to the process, machine, manufacture, or composition of matter described in the Expired and Inapplicable Patents. Moreover, every person or company in the United States is a potential competitor with respect to the Falsely Marked Products marked with the Expired and Inapplicable Patents.

38. Each Falsely Marked Product or advertisement thereof, because it is marked with or displays the Expired and Inapplicable Patents, is likely to, or at least has the potential to, discourage or deter each person or company (itself or by its representatives), which views such marking from commercializing a competing product, even though the Expired and Inapplicable Patents do nothing to prevent

any person or company in the United States from competing in commercializing such products.

39. The false marking alleged in this case and/or advertising thereof has quelled competition with respect to similar products to an immeasurable extent, thereby causing harm to the United States in an amount that cannot be readily determined.

40. The false marking alleged in this case constitutes wrongful and illegal advertisement of a patent monopoly that does not exist. As a result, the false marking has resulted in increasing, or at least maintaining, the market power or commercial success with respect to the Falsely Marked Products, providing motive for Garmin to continue to falsely mark its products. According to Garmin's 2009 Annual Report, Garmin maintained a 36% market share of the personal navigation device market, a 2% increase from 2008. Garmin's revenues from the outdoor/fitness market segment, which would include the Falsely Marked Products, increased 10% in 2009, despite every other market segment decreasing in revenue. Further, the Falsely Marked Products and their associated intellectual property are important to Garmin's market power as explained in the 2009 Annual Report:

While our automotive/mobile market is our most visible segment, we continue to *innovate* in other markets as

well. In the outdoor recreation and fitness market, we introduced the Approach™, a golf GPS with a brilliant touchscreen and thousands of preloaded courses. *We debuted an array of fitness watches, designed for everyone from the most casual of runners to elite triathletes.*

2009 Annual Report (emphasis added). Garmin again stresses the importance of its intellectual property to maintain and strengthen its market share in the outdoor/fitness market, explaining “[f]rom do-it-all touchscreen outdoor handhelds to wireless workout wonders, *customers turned to Garmin’s innovative devices* in an economy where budget-friendly activities focused on family adventures and personal wellness.” (emphasis added). Garmin continues to strengthen its patent portfolio to improve market share stating “Garmin’s worldwide IP portfolio grew to over 400 patents and 250 trademark registrations — a true testament to our innovation and one that’s been recognized across the industry.”

41. Each individual false marking (including each time an advertisement with such marking is accessed on the Internet) is likely to harm, or at least potentially harms, the public. Thus, each such false marking is a separate offense under 35 U.S.C. §292(a).

42. Each offense of false marking creates a proprietary interest of the United States in the penalty that may be recovered under 35 U.S.C. §292(b).

43. For at least the reasons stated in paragraphs 2 to 42 above, the false marking alleged in this case caused injuries to the sovereignty of the United States arising from violations of federal law and has caused proprietary injuries to the United States.

CLAIM

44. For the reasons stated in paragraphs 2 to 43 above, Garmin has violated section 292 of the Patent Act by falsely marking the Falsely Marked Products with intent to deceive the public.

PRAYER FOR RELIEF

45. Relator thus requests this Court, pursuant to 35 U.S.C. §292, to do the following:

A. enter a judgment against Garmin and in favor of Relator that Garmin has violated 35 U.S.C. §292 by falsely marking products with knowledge that the patent has expired and/or are not applicable for the purpose of deceiving the public;

B. order Garmin to pay a civil monetary fine of \$500 per false marking offense, or an alternative reasonable amount determined by the Court taking into consideration the total revenue and gross profit

derived from the sale of falsely marked products and the degree of intent to falsely mark the products, one-half of which shall be paid to the United States and the other half to Relator;

C. enter a judgment declaring that this case is “exceptional,” under 35 U.S.C. §285 and award in favor of Relator, and against Garmin, the costs incurred by Relator in bringing and maintaining this action, including reasonable attorneys’ fees;

D. order that Garmin, its officers, agents, servants, employees, contractors, suppliers, and attorneys be enjoined from committing new acts of false patent marking and be required to cease all existing acts of false patent marking within 90 days; and

E. grant Relator such other and further relief as the Court may deem just and equitable.

JURY DEMAND

46. Relator demands a jury trial on all issues so triable.

Dated: April 14, 2011

Respectfully submitted,

/s/ Randall T. Garteiser
Randall T. Garteiser
Texas Bar No. 24038912

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1 6,381,540	4/30/2002	Garmin Corporation (TW)
2 6,377,516	4/23/2002	Garmin Corporation (TW)
3 6,373,430	4/16/2002	Garmin Corporation (TW)
4 6,335,905	1/1/2002	Garmin Corporation (TW)
5 6,330,149	12/11/2001	Garmin Corporation (TW)

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

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ATTORNEYS FOR GHJ HOLDINGS, LLC

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1 6,317,689	11/13/2001	Garmin Corporation (TW)
2 6,222,485	4/24/2001	Garmin Corporation (TW)
3 6,188,956	2/13/2001	Garmin Corporation (TW)
4 6,188,955	2/13/2001	Garmin Corporation (TW)
5 6,173,933	1/16/2001	Garmin Corporation (TW)

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2 6,129,321	10/10/2000	Garmin Corporation (TW)
3 6,128,515	10/3/2000	Garmin Corporation (TW)
4 6,108,269	8/22/2000	Garmin Corporation (TW)
5 6,076,039	6/13/2000	Garmin Corporation (TW)

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AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Eastern District of Texas on the following

☐ Trademarks or ☒ Patents. (☒ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 5:11-cv-85	DATE FILED 4/14/2011	U.S. DISTRICT COURT Eastern District of Texas
PLAINTIFF GHJ Holdings, LLC		DEFENDANT GARMIN INTERNATIONAL, INC., GARMIN CORPORATION, GARMIN USA, INC. AND GARMIN
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,002,982	12/14/1999	William R. Fry (Colorado Springs, CO)
2 5,951,399	9/14/1999	Garmin Corporation (TW)
3 5,936,553	8/10/1999	Garmin Corporation (TW)
4 5,930,200	7/27/1999	Garmin Corporation (TW)
5 5,910,882	6/8/1999	Garmin Corporation (Olathe, KS)

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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4		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,111,150	5/5/1992	Garmin Corporation (Lenexa, KS)
2 D365,032	12/12/1995	Garmin Corporation (Lenexa, KS)
3 D365,292	12/19/1995	Garmin Corporation (Lenexa, KS)
4 D409,927	5/18/1999	Garmin Corporation (TW)
5 D427,919	7/11/2000	Garmin Corporation (TW)

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	
	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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PLAINTIFF GHJ Holdings, LLC		DEFENDANT GARMIN INTERNATIONAL, INC., GARMIN CORPORATION, GARMIN USA, INC. AND GARMIN
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 D429,173	8/8/2000	Garmin Corporation (TW)
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
(TEXARKANA DIVISION)**

**GHJ HOLDINGS, LLC,
Relator,**

vs.

**GARMIN INTERNATIONAL, INC.,
GARMIN CORPORATION,
GARMIN USA, INC. AND GARMIN
LTD.,
Defendants.**

Case No.: 5:11-cv-85

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR FALSE PATENT MARKING

Relator GHJ Holdings, LLC ("Relator") alleges as follows:

NATURE OF THE CASE

1. This is an action for false patent marking under section 292 of the Patent Act (35 U.S.C. §292), which provides that any person may sue to recover the civil penalty for false patent marking. Relator brings this qui tam action on behalf of the United States of America.